

1st International OFEL
Conference on Corporate
Governance

• ORGANIZATIONAL, FINANCIAL, ETHICAL AND LEGAL ISSUES
OF CORPORATE GOVERNANCE •

ABSTRACTS OF THE
PROCEEDINGS

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Outreach and integration with the South East Europe area

In conjunction with the OFEL conference and in cooperation with CIRU (Governance Research and Development Centre) an academic workshop was held by the Academy of Management (AoM) Managerial and Organizational Cognition (MOC) division for early career researchers from Universities in the South East Europe area. Senior editors from leading academic journals (impact factors 2.6+) have helped the participants transform their existing research results into articles publishable in such outlets. The MOC division reaches out to perspective young scholars from the area, trying to help their integration into the international academic knowledge exchange, as it is realized that there are valuable contributions that struggle with publication despite strictly following the criteria, as they cannot adhere to the unspoken conventions.

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From the Editors

One of the most important challenges in raising competitiveness and creating a new, better society in the 21st century is the promotion and development of good corporate governance practices at the global level. Corporate governance can be defined as a sort of management of management or metamanagement, since it incorporates the set of relations between the management, board, shareholders and stakeholders of a firm, and defines the framework for setting goals and determining the means to achieve those goals, as well as for monitoring the performance and efficiency of the firm. The system of corporate governance is defined by the answers to the following questions: which are the most important stakeholders which affect the decisions made by corporations; which instruments and mechanisms a particular stakeholder has at its disposal, how it uses them and in which way it participates in corporate governance; in which way the roles of individual stakeholders affect the fundamental issues and problems of corporate governance.

Corporate governance systems and the role of corporations' governing structures are very important for creating an effective corporate governance framework. Good corporate governance depends on the balance of relations between internal and external mechanisms which ensure the efficiency of governing and help in the resolution of natural problems, as well as the possible conflicts that may occur within a corporate structure. The first International OFEL Conference on Corporate Governance focuses on organizational, financial, ethical and legal issues of corporate governance. The overall objective was to portray some of the challenges, problems and corporate governance issues faced by companies and to disseminate important experiences from different regions and diverse systems of corporate governance.

Contribution of the first International OFEL Conference on Corporate Governance lays in illustrating the corporate governance practices from 33 countries. The focus of the papers was devoted to interesting questions such as the role of boards and top management teams in corporate governance; financial aspects of corporate governance; institutional and legal aspects of corporate governance; social responsibility, ethics and corporate governance; auditing, transparency and disclosure issues in corporate governance; corporate governance in the international context; strategic management and corporate governance; leadership, communication and corporate governance; practices and problems in corporate governance and management.

We hope that these papers are interesting and beneficial for all those engaged in the areas of corporate governance and management, from academia and corporate world.

Professor Darko Tipurić, Ph.D.

Assistant Professor Najla Podrug, Ph.D.

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DISCRIMINATION IN MACEDONIAN COMPANIES: CASE STUDIES RESEARCH AND ANALYSIS OF CURRENT DISCRIMINATION GROUNDS, FORMS AND TRENDS

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ABSTRACT

Discrimination is one of the most common forms of human rights violations. Transition in the economic sphere contributes to greater violations of workers' rights, especially in the private sector.

Discrimination which is evident in companies in the Republic of Macedonia is mostly done by the owners or management and on the ground of personal status, gender, ethnicity and age, and mostly in the form of harassment and direct discrimination.

Very often, employees are afraid to submit complaints to independent institutions not to worsen their position. The paper presents results of case studies research of complaints submitted to the Commission for Protection from Discrimination. Also, the paper analyzes the institutional and legal framework by identifying the key issues and recommendations for overcoming them. The text uses results from research that have been conducted in Macedonian companies and related discrimination as an illustration of trends and patterns.

The main thesis is that discrimination in Macedonian companies is a hidden phenomenon, which is often presented in different forms and that is necessary to build the anti-discrimination mechanisms in the company sector through Unions and oversight by the state institutions. At the same time, it is necessary to strengthen the protective mechanisms for fact findings that will prove discrimination.

Keywords: *companies, discrimination, grounds and forms of discrimination, mechanisms for protection*

1. INTRODUCTION

“Discrimination in its many manifestations is holding back hundreds of millions, especially women, from realizing their potential and contributing on an equal footing to the development of our societies and economies”¹.

¹ See: *Message by ILO Director-General on World Day for Social Justice (2013)*. Retrieved 26.02.2013 from http://www.ilo.org/global/about-the-ilo/who-we-are/ilo-director-general/statements-and-speeches/WCMS_205246/lang--en/index.htm

The discrimination is a globally spread phenomenon. The Republic of Macedonia is no exception from this trend. Surveys show that as much as 33.5% of the Macedonian adult population consider that they have been victims of discrimination or harassment in the last 12 months. Furthermore, the situation becomes even more concerning² if one takes into consideration the opinion of half of the surveyed citizens (51%) who consider that discrimination on multiple grounds occurs very often, and the fact that 55.6% of the surveyed persons do not know what rights they have in case they become a victim of discrimination.³ However, these surveys are based on the perception of citizens and cannot be substantiated with facts. Yet, they can serve as a significant indicator of the current situation in the country.

Moreover, the discrimination that occurs in the private sector is very hard to detect and rectify due to the lack of will among the alleged victims for submitting complaints to the protective mechanisms respectfully and weak trade unions protection. This can be seen from the case work of the national equality body.

2. LEGAL FRAMEWORK IN THE COUNTRY

As regards the legislation, in the last several years, the Republic of Macedonia has established an anti-discrimination legal framework, which seems to lay solid foundations upon which case law can be developed in the future.

Article 9 of the Constitution of the Republic of Macedonia has a blanket clause on equality, envisaging that "Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law."⁴ This clause has been criticized for the fact that it uses the word "*citizens*", which leaves the impression that this clause does not protect against discrimination of foreign nationals (stateless persons and persons of foreign nationality). Furthermore, Article 9 does not refer to certain discriminatory grounds that are widely spread nowadays, such as disability, age and sexual orientation, and the clause contains an exhaustive list of discriminatory grounds. Furthermore, in view of the fact that Article 9 relates to individual human rights and freedoms, i.e. rights and freedoms of natural persons, it does not envisage protection against discrimination of legal persons. Despite all the criticism of this Article, for years, the Constitutional Court has been interpreting this clause rather restrictively, which is clearly demonstrated by the fact that the Court has proclaimed itself as not

² See: Simovska, E., Gaber, N., Jovevska, A., Atanasov, P., Babunski, K. (2008). *Research Project: How Inclusive is the Macedonian Society (Истражувачки проект: Колку е инклузивно македонското општество)*. Skopje: Foundation Open Society Institute – Macedonia. Retrieved 15.02.2013 from <http://www.soros.org.mk>.

³ See: Petrovska Beshka, V., Najchevska, M. (2009). *Research Report: Equal Opportunity Barometer, (Истражувачки извештај: Барометар за еднакви можности)*. Skopje: Macedonian Centre for International Cooperation. Retrieved 15.02.2013 from <http://www.mcims.org.mk>. This paper is part of the publication *Discrimination in the European Union: Perceptions, Experiences and Attitudes, Special Eurobarometer 296*. (2008). Brussels: European Commission. Retrieved 15.02.2013 from http://ec.europa.eu/public_opinion/archives/ebs/ebs_296_en.pdf.

⁴ See: Constitution of the Republic of Macedonia (Устав на Република Македонија). (1991). *Official Gazette of the Republic of Macedonia, No. 52/1991*, from 22 November 1991, Article 9. Retrieved from <http://www.slvesnik.com.mk>.

competent to decide in almost all cases of alleged discrimination, refusing to consider cases on their merits.⁵ This raises the issue of effectiveness of this legal remedy/protection procedure.

Hence, the national legislation has started to explicitly prohibit discrimination following the adoption of several laws, especially labour law. This trend culminated in 2010 with the adoption of the Law on Prevention and Protection against Discrimination⁶. Regrettably the lack of sufficient judicial practice and quasi-judicial case law⁷ sets a significant obstacle to the further advancement in the application of these legal institutes provided for by the anti-discrimination legislation.

2.1 Law on Prevention and Protection against Discrimination

The Law explicitly prohibit all forms of discrimination, including direct (Article 6, paragraph 1) and indirect discrimination (Article 6, paragraph 2) and harassment (Article 7), prescribing the need for reasonable accommodation (Article 5, paragraph 1, item 12 and Article 8, paragraph 2), prohibiting the instruction to discriminate (Article 9) by natural and legal persons, in the public and in the private sectors, in areas of employment and labour relations, education, access to goods and services, housing, health care, social protection, administration, justice system, science, sports, membership of and activity in trade unions, political parties and civil society organizations and in other relevant areas.

Article 3 of the Law makes reference to discriminatory grounds such as: sex, race, colour, gender, belonging to a marginalized group, ethnic affiliation, language, nationality, social origin, religion or religious beliefs, other conviction, education, political affiliation, personal and social status, mental and physical disability, age, family and marital status, property status and health status,

⁵ According to Article 110, paragraph 3 of the Constitution, the Constitutional Court protects the constitutionality and legality, while citizens may file and application to the Constitutional Court in order to *protect their human rights and freedoms* relating to *inter alia* prohibition of discrimination among citizens. This provision is made operative under the Rules of Procedure of the Constitutional Court, i.e. under its Article 51. In 2011, out of the total number of 361 new cases before the Constitutional Court, 23 cases were related to protection of freedoms and rights guaranteed under Article 110, of which the Court settled 23 cases, and transferred 4 cases to 2012. See: *Review of the Work of the Constitutional Court of the Republic of Macedonia – 1 January-31 December 2011 (Осврт на работата на Уставниот суд на Република Македонија од 1 јануари 2011 до 31 декември 2011 година)*. (2012). Skopje: Constitutional Court, pp: 7-12 and pp. 32-34. Retrieved 14.02.2013 from the website of the Constitutional Court: <http://www.ustavensud.mk/domino/WEBSUD.nsf>.

⁶ See: Law on Prevention and Protection against Discrimination (Закон за спречување и заштита од дискриминација). (2010). *Official Gazette of the Republic of Macedonia, No.50/2010*, from 13 April 2010. Retrieved 14.02.2013 from <http://www.slvesnik.com.mk>. Even though the Law was adopted in April 2010, the application of the Law was postponed to 1 January 2011. This Law is expected to bridge legal gaps that exist in the country's legal system in the anti-discrimination area and to facilitate the legal protection of all natural and legal persons who are alleged victims of discrimination. However, the process of the Law's adoption was controversial and the issue of the Law's full harmonization with the EU *acquis* is still open. For more on this issue see: *Macedonia 2011 Progress report*. (2011). SEC(2011) 1203 final. Brussels: European Commission, pp. 55 and 63. Retrieved 14.02.2013 from http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mk_rapport_2011_en.pdf.

⁷ According to the national legislation, there are two quasi-judicial protective mechanisms available to citizens in cases of violation of their rights by discrimination: the Commission for Protection against Discrimination and the Ombudsman. According to the Law on the Ombudsman, this institution is responsible for, *inter alia* protection of the principle of non-discrimination. See: Law on the Ombudsman (Закон за народен правобранител). (2003). *Official Gazette of the Republic of Macedonia, No. 60/2003 and 4/2009*, Article 2. In 2011, out of the total number of applications filed with the Ombudsman's Office, only 0.99% were cases of alleged discrimination. On the other hand, in 2011, the Commission for the Protection against Discrimination received a total of 61 complaints.

envisaging also a non-exhaustive list of discriminatory grounds with the phrase “*or on any other ground*”. Furthermore, Article 12 of this Law refers to multiple discrimination as a grave form of discrimination, i.e. discrimination against a person simultaneously on several discriminatory grounds. However, the law contains a wide, imprecise list of exceptions from discrimination including positive actions (Article 13-15), that if used with wide margin of discretion can open a space for legal uncertainty.

Regretfully and in contrary to the European standards, the Law do not explicitly prohibit job vacancy announcements discriminating on any of the grounds. This should be changed in the future and harmonized with the existing anti-discrimination standards. In addition, it should be mentioned that in the case of harassment, the Macedonian legislation does not give a clear answer to the question about the responsibility of the authorised person (employer or service provider) for the harassment perpetrated by third persons. However, it is considered that the responsibility of the employer for the conduct of third persons, including for harassment, will depend largely on the nature of their relationship, and on the future case law on this issue.

The law foreseen establishment of a protective mechanism, equality body – the Commission for Protection against Discrimination (Article 16-33), that can deal with both the public and the private sector. The Commission is established as autonomous and independent body composed of seven members appointed by the national Parliament with five year mandate. Its mandate is rather broad and encompasses dealing with discrimination claims and providing assistance to victims, research, promotion and education, initiating legislative changes, inter-institutional cooperation, collecting statistic data and creating databases, and adoption of bylaws for its work and internal structure.

2.2 Labour Law

The Labour law⁸ which is the *lex generalis* in labour relations explicitly prohibit all forms of discrimination, including direct (Article 7, paragraph 2) and indirect discrimination (Article 7, paragraph 3) and harassment⁹ (Article 9) by natural and legal persons, in area of employment and labour relations¹⁰ on the grounds of: race or ethnic origin, colour, sex, age, health condition, disability, religious, political or other belief, membership in a trade union, national or social origin, family status, property status, sexual orientation, or other personal circumstances (Article 6 paragraph 1). The Law does not differentiate between employees in the public and those in the private sector (Article 3, paragraph 1) or between temporary and permanent workers (Article 8,

⁸ See: Law on Labour Relations (Закон за работни односи). (2005). *Official Gazette of the Republic of Macedonia*, No. 62/2005, 106/2008, 161/2008, 114/2009, 16/2010 (consolidated text), 50/2010, 52/2010, 158/2010 (consolidated text) and 47/2011, Article 6. This Law refers to 16 discriminatory grounds with non-exhaustive list of discriminatory grounds.

⁹ Article 9 and Article 9-a of the Labour Law make a difference between generally defined harassment, sexual harassment and mobbing (psychological harassment in the working environment) as forms that amount to discrimination. The Law stipulates that the perpetrator of mobbing could be one or more persons in their capacity of employers, as natural persons, authorised persons or co-workers (Article 9-a, para. 4).

¹⁰ Similarly to EU Directive 2000/78/EC, the law regulate the conditions for access to a certain job, self-employment or occupation, including selection criteria; promotion at work; access to all types and levels of professional counselling, training, advanced professional training and re-training, including on-the-job training; conditions for employment and work, including salaries and other remuneration and dismissal; membership of and participation in activities of trade unions and organizations of employers and professional associations, and benefits deriving from such membership.

paragraph 3). Furthermore, the Law does not protect volunteers, which is in full compliance with EU Directive 2000/78/EC¹¹.

The Labour Law prohibits discriminatory criteria and conditions for selection of job candidates, thus it can be considered to prohibit discriminatory job vacancy announcements (Article 7, paragraph 4 line 1). In addition, Article 24, paragraph 1 of the Law explicitly prohibits job opening announcements or statements which discriminate on the grounds of gender, by stipulating that: "the employer must not announce a job opening only for men or only for women, unless a specific gender is an absolute necessity for the performance of the job." This should be extended to other grounds in accordance to the existing anti-discrimination standards.

Despite the fact that reasonable accommodation is very important especially for persons with disabilities in the employment and work relations, yet this legal institute is not explicitly mentioned in the Labour Law, which is criticized as one of the Law's greatest shortcomings.

3. CURRENT PRACTICE IN THE CASE LAW OF THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION AND CURENT TRENDS

3.1 Illustrative examples from the case work

Assessing the Commission's opinions covering the period since its creation January 2011 till nowadays, February 2013, it can be concluded that a much greater number of complaints are registered in the public sector, compared to the private sector. Namely, statistic shows that there have been a total of 146 complaints submitted to this body regarding protection from discrimination; out of this 77 were closed. From the submitted cases 59 are registered in the area of labor and work relations on the following grounds: 5 on ethnicity, 8 on political affiliation, 1 on age, 2 on health status, 4 on personal or social status, 4 on education, 4 on other status, 8 on non stated ground, and 23 on multiple grounds. From these cases only 11 were registered against private legal entities from which 6 are cases in the area of employment and work relations in the private sector.

As elaborated above, the discrimination that occurs in the private sector is hidden still due to the lack of will among the alleged victims for submitting complaints to the protective mechanisms respectfully and week trade unions protection.

3.1.1 Age

In the Republic of Macedonia, in the period of transition there was an increase in the number of unemployed as a result from their treatment as redundancy or bankruptcy. Huge number of them were workers over 50 years of age and they have become unattractive for the new employers and in the same time, the most affected group in the field of employment and most exposed to indirect discrimination to date. "Policies at the national and enterprise level can complement legislation and play a major role in addressing myths and overcoming stereotypes concerning older workers. A number of countries, such as Australia, Finland, Netherlands, Norway and the United Kingdom, have conducted large-scale government-sponsored information campaigns

¹¹ See: Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for Equal Treatment in Employment and Occupation. (2000). *OJ L 303/16*. Retrieved 15.02.2013 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:303:0016:0022:EN:PDF>.

aimed at overcoming employer reluctance to hire and retain older workers.”¹². However, this is not the case in Macedonia, excluding certain benefits that are given to companies if they hire older workers. In addition to this prejudice that the elderly are less productive follows the practice. This will be clearly pointed in the case work of the Commission presented below.

Namely, in 2011, the Commission found discrimination and harassment on ground of age in the area of employment in the case K.A. vs. the Fund for Pension and Disability Insurance.¹³ K.A. is a woman, lawyer 61 years old, employed in the regional Unit of the Fund in Gostivar. After presented opportunity for early retirement by the Director of the Fund, she chooses to go into retirement on age of 64 years, thus using the opportunity provided in the Labour law, that the women can choose to go into retirement on age of 62 or 64 years. Immediately after this the Director of the Fund gave to K.A. a new contract with new assignments, transferring her to Radovis, distance 170 km from her place of residence. The Commission after assessing the factual situation found harassments on ground of age due to the fact that K.A. has been put in a less favorable position. The Commission considered the constitutive elements that need to exist to prove a harassment claim and that no comparator (similar situation) is needed in this kind of cases. Furthermore, it was concluded that the employer did not apply the special protection of women over the age of 57 years provided within the Labour law. After presenting the opinion of the Commission, the employer removed the discrimination and returned K.A. to the previous position.¹⁴

Similar case to the above stated is the case S.M. vs. the Fund for Pension and Disability Insurance. The S.M is a woman who is employed in the Fund-Unit Gostivar and she was eligible to go into retirement after a year and two months. The employer moved her to a position in Bitola, a town 150 km far from her place of residence. She was forced to retire earlier as planned just to avoid traveling 150 km every day. The Commission assessed the factual situation and was on the same stand as the previous case K.A. that the employer was harassing S.M. however due to the fact that S.M. retired and there was no reason for the Commission to continue working on the case the Commission suspend the procedure according to the Law on Prevention and Protection against Discrimination¹⁵.

3.1.2 Gender

As the Committee on the Elimination of Discrimination against Women in the country review¹⁶ rightly putted: “discrepancy between declarative intentions in the adopted legislation and the

¹² Report on the Director-General. (2011). *Equality at Work: The Continuing Challenge - Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Research report no. I (B) ILO). International Labour Conference, 100th Session 2011, Paragraph 199. International Labour Office: Geneva.

¹³ In the Opinion dated 10.10.2011 reference to the domestic provisions (Article 179 from the Labour law and Article 3, 4, and 28 from the Law on Prevention and Protection against Discrimination) were stated.

¹⁴ See: Case 07/122, *Opinion dated 10.10.2011 (Претставка А.К. против Фонд на ПИОМ, Скопје)*. (2011). Retrieved 26.02.2013 from <http://www.kzd.mk/mk/prestavki/2011-mislenja/category/14>.

¹⁵ See: Case 07/63, *Opinion dated 05.07.2011 (Претставка С.М. против Фонд на ПИОМ, Скопје)*. (2011). Retrieved 26.02.2013 from <http://www.kzd.mk/mk/prestavki/2011-mislenja/category/8-vozzrast>.

¹⁶ See: Committee on the Elimination of Discrimination against Women (2013). *Combined fourth and fifth periodic reports of States parties, The former Yugoslav Republic of Macedonia* (CEDAW/C/MKD/4-5). Committee on the Elimination of Discrimination against Women, 54th Session 2013. Committee on the Elimination of Discrimination against Women: Geneva. Retrieved 26.02.2013 from <http://www2.ohchr.org/english/bodies/cedaw/cedaws54.htm>.

factual status of women had increased, and of particular concern was the situation in the area of *inter alia* employment of women.”¹⁷ In this context at high risk are exposed unmarried or young women who are expected to give birth, mothers of small children, mothers of children with disabilities and pregnant women. They are usually victims of direct and indirect discrimination. This statement goes hand in hand with the below presented case. Namely, in December 2012 the Commission received complaint from S.S. against private company from Stip. S.S. is a woman who has signed employment contract for a period of six months. Meanwhile she got pregnant but had the need for more frequent sick leave due to problems during pregnancy. However, after six months, the employer did not extend her the contract with the explanation that she is often absent, and thus unproductive. The alleged victim claims that the employer is not extending her contract merely because she is pregnant and will need to use her maternity benefits in future, so assuming discrimination on grounds of sex. This case is still in the fact-finding process with the Commission, but the presented facts and evidence can not determine the real causes (no recording of the employer’s statement or witness statement/s to make this allegation of unequal treatment on ground of sex probable). If the Commission receives additional evidence or probable facts it is likely to determine direct discrimination on grounds of sex in the field of employment.

3.1.3 Ethnicity

Republic of Macedonia is a multiethnic society, and this is reflected in the public as well as in the private sector. In the public sector there are a number of affirmative measures to ensure equitable representation of all ethnic communities, but such a criterion can not be applied in the private sector. European Commission against Racism and Intolerance (ECRI) recommends that “employers test and review their recruitment and selection procedures to eliminate racism and direct and indirect racial discrimination, including reviewing their conditions for access to employment, selection criteria, recruitment processes, as well as selection for promotion and access to training opportunities and practical work experience”.¹⁸ As presented above in the general statistic from the work of the Commission can be seen that the ethnicity as a discriminatory ground is one of the most frequent ones. The below presented case is just an illustrative example of this phenomenon.

In 2011, the Commission for Protection against Discrimination received a complaint on the basis of ethnicity and political affiliation by N.Z. vs. public enterprise Macedonian Post. Namely, the applicant states that the company employs only members of the e/Macedonians and e/Albanians and supporters of the parliamentary majority. N.Z. claims that she worked under part-time employment contract in the company, but because she belongs to the Bosniak community and because was not a member of any political party was dismissed. The Commission, having received all facts, found no discrimination concluding that the company’s workforce is comprised of members from all communities, including Bosniak. However, in a number of companies there is probability of existence of indirect discrimination on the ground of ethnicity and in separate cases direct discrimination. International standards recommends that to reduce the number of

¹⁷ *Ibid*

¹⁸ See: European Commission against Racism and Intolerance (2012). *ECRI Policy Recommendation No.14 on Combating Racial Discrimination in Employment* (CRI(2012)48), Paragraph 4 (a). European Commission against Racism and Intolerance: Strasbourg. Retrieved 26.02.2013 from http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N14/e-GPR%2014%20-%20A4.pdf.

potential discrimination it is necessary the companies to prepare and provide codes of conduct and equality plan/s.¹⁹

3.2 Distinction between harassment and mobbing in the working environment

As stated "the line between employment protections from discrimination and protections from harassment is not clearly defined, but anti-discrimination policies typically emphasize the responsibility of the *employer* and the anti-harassment policies emphasize the responsibility of the *employees*. Often, anti-harassment and non-discrimination statements are wrapped into the same policy language"²⁰. This is the case in Macedonia as well. In addition to this undefined line in the anti-discrimination legislation, there is not a clear distinction between harassment and mobbing. Namely, the Labour law differentiates between generally defined harassment, sexual harassment and mobbing (psychological harassment in the working environment) as forms that amount to discrimination²¹. However this is not the case in the Law on Prevention and Protection against Discrimination, Article 7. This is especially problematic in the fact finding in cases and determination of discriminatory behavior.

Based on the past experience of the Commission for Protection against Discrimination, mobbing amounts to harassment (as a form of discrimination) only if the discriminatory ground, as a constitutive element of harassment under the anti-discrimination legislation, can be determined. If not, then the case should be treated according to the Labour law. To complicate the thing even more, there is a non-exhaustive list of discriminatory grounds in the both laws, Law on Prevention and Protection against Discrimination and the Labour law, and thus the Commission and the courts through their practice can introduce new grounds of discrimination, making mobbing more familiar to harassment. Also, the personal and social status as discriminatory ground provided with the Law on Prevention and Protection against Discrimination can be extensively interpreted including the subordinate status of the employee in a working environment, in relation to its supervisor or manager. This opens the possibility mobbing to be treated as harassment in the anti-discrimination legislation.²²

¹⁹ *Ibid.* Develop and promote codes of conduct for good practice in employment and equality plans in order to create a diverse working environment which encourages respect for all. These will support employers to promote equality and eliminate and prevent racial discrimination and racial harassment in the workplace, including, among others, in recruitment and selection, in access to opportunities for training and promotion, and in termination of employment.

²⁰ Report from the Human Rights Campaign. (2010). *Workplace Discrimination: Policies, Laws and Legislation*. Washington, DC. Retrieved 26.02.2013 from <http://www.hrc.org/resources/entry/Workplace-Discrimination-Policies-Laws-and-Legislation>

²¹ See: supra note 9. More on mobbing see: Todorova, B. (2012). Mobbing in labour legislation of Republic of Macedonia vs. the regulation of the European Union countries. *Evrodijalog*, 2012, (No.16), pp.257-266.

²² Currently the Ministry of Labour and Social Policy works on proposing Law on mobbing that was shown as a great need due to the ongoing practice of mobbing in the working environment. Namely, in accordance with the results from survey provided from the Federation of Trade Unions in Macedonian, Mobbing Call Center, around 44% employees are victims of mobbing. More than 43% of victims have from 6 months to 5 years work experience. In 58% of cases more than two employees on supra ordinal position perform mobbing against victim. In 38% of cases, the result from mobbing is removal from work. But, unfortunately only 38% of the victims had evidence to prove the concrete mobbing. See: Report from the Federation of Trade Unions in Macedonian (*Сојуз на синдикати на Македонија*). (2012). *Results from the work of the free legal aid office*. Skopje. Retrieved 26.02.2013 from http://www.ssm.org.mk/index.php?option=com_content&view=article&id=575%3Akancelarija-za-zrtvite-od-mobing&catid=129&Itemid=158&lang=mk.

4. CONCLUSIONS

Based on the above stated it can be concluded that discrimination is a worldwide spread phenomenon, the Republic of Macedonia not being the exclusion from this trend. As regards the national legislation, in the least years an anti-discrimination framework has been created which could be considered as a relatively solid basis, upon which future case law can be developed. However, in many areas there remains much work to be done, only with joint efforts and active contribution by all actors in the country, both governmental and non-governmental ones including the social partners.

From presented examples of cases on discrimination in the companies registered by the Commission for Protection against Discrimination it can be concluded that most frequent grounds are age, gender and ethnicity. Furthermore, multiple discrimination can be seen as emerging phenomenon. Evidently, direct discrimination and harassment are most frequent forms of discrimination, with possibilities of emerging cases of indirect discrimination. Finally, distinction between harassment and mobbing especially in the anti-discrimination legislation is particularly challenging and should be cleared.

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